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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

| | | |
|---|---|---------------------------------------|
| THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, |) | CASE NO. C 07-3747 PJH |
| Plaintiff, and |) | |
| |) | PLAINTIFF-INTERVENOR STEVEN J. |
| |) | CARAUDDO’S MOTION FOR LEAVE |
| |) | TO INTERVENE |
| STEVEN J. CARAUDDO, |) | |
| Plaintiff - Intervenor, |) | DATE: January 30, 2008 |
| |) | TIME: 9:00 a.m. |
| v. |) | Courtroom 3 |
| |) | |
| LUCENT TECHNOLOGIES, INC., AND |) | TRIAL DATE: March 30, 2009 |
| DOES 1 THROUGH 20 |) | |
| |) | |
| Defendants. |) | |
| |) | |

I. INTRODUCTION

Plaintiff California Department of Fair Employment and Housing (“DFEH”) filed a complaint against defendant Lucent Technologies, Inc. (“Lucent”), alleging, *inter alia*, that it had discriminated

1 against Steven J. Carauddo ("Carauddo"). The complaint filed by the DFEH alleged that Carauddo was
2 real party in interest. Carauddo now seeks leave to intervene in this action pursuant to FRCP 24(a), on
3 the grounds that he has an interest the subject matter of this action, and the disposition of this action will
4 affect his rights and interests. In the alternative, Carauddo should be permitted to file his proposed
5 Complaint In Intervention pursuant to FRCP 24(b) on the grounds that his claims against Lucent is
6 based upon the same facts as the claims that the DFEH is bringing against Lucent, and Carauddo's
7 intervention shall not unduly delay or prejudice the adjudication of the rights of the original parties. The
8 DFEH has consented to this intervention, but Lucent has refused to agree to the intervention.

9 **II. STATEMENT OF FACTS**

10 On or about June 27, 2007, the DFEH filed a complaint in Alameda Superior Court, alleging that
11 Lucent had terminated Carauddo on account of disability, had failed to reasonably accommodate him,
12 and had failed to engage in the interactive process. In that complaint, the DFEH alleged that Carauddo
13 was the "real party in interest."

14 Subsequent to the filing of the case in Alameda Superior Court, Lucent removed the case to this
15 Court. The DFEH moved to remand the case back to Alameda Superior Court. The Motion to Remand
16 was heard on October 3, 2007. At the conclusion of the hearing, the Court denied the DFEH's Motion
17 to Remand.

18 Since the Court heard the DFEH's Motion to Remand, there have only been two developments in
19 the case. First, the parties have exchanged Initial Disclosures. (However, the parties have not engaged
20 in any additional written discovery, nor have they scheduled any depositions.). Second, the Court has
21 set the case for trial on March 30, 2009. This case is, essentially, in its infancy.

22 Carauddo's proposed Complaint-in-Intervention and the DFEH's Complaint are based upon the
23 exact same facts. The Complaint filed by the DFEH contains three causes of action: Wrongful
24 Termination in Violation of Government Code Section 12940(a); Failure to Accommodate in Violation
25 of Government Code Section 12940(m); and Failure to Engage in a Timely, Good Faith Interactive
26 Process in Violation of Government Code Section 12940(n). The proposed Complaint-in-Intervention
contains all three of these causes of action, plus two additional causes of action (Wrongful Termination
in Violation of Public Policy, and Violation of Business and Professions Code § 17200). (A copy of the

1 proposed Complaint-in-Intervention is attached hereto as Exhibit A.) Resolution of the claims asserted
 2 in the both the DFEH's Complaint and the proposed Complaint-in-Intervention will involve most of the
 3 same discovery, and many of the same legal issues.

4 As explained more fully in the attached Declaration of Sharon R. Vinick In Support of
 5 Carauddo's Motion to Intervene ("Vinick Decl."), the DFEH has agreed to Carauddo's intervention in
 6 this case. However, counsel for Lucent has, without explanation, refused to agree to the proposed
 7 intervention, thus necessitating the filing of this motion.

8 **III. ARGUMENT**

9 **A. Under California Government Code § 12965(c)(2) and FRCP 24(a), Carauddo is Entitled to** 10 **Intervene.**

11 California Government Code § 12965(c)(2) provides that in an action filed by the DFEH, "the
 12 person claiming to be aggrieved shall have the right to participate as a party and be represented by his or
 13 her own counsel." Carauddo, as the "real party in interest" in the case filed by the DFEH is, by
 14 definition, the "person claiming to be aggrieved." As such, Carauddo has an unambiguous *right* to
 15 intervene in the instant case and to be represented by his own counsel (rather than the DFEH).

16 Under FRCP 24(a), "[u]pon timely application anyone shall be permitted to intervene in an
 17 action . . . (2) when the applicant claims an interest relating to the property or transaction which is the
 18 subject of the action and the applicant is so situated that the disposition of the action may as a practical
 19 matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is
 20 adequately represented by existing parties." Given that Carauddo is entitled, by statute, to intervene in
 21 the pending action, he clearly has "an interest relating to the property or transaction which is the subject
 22 of the action." Furthermore, since Carauddo's claims are based upon the same facts and circumstances
 23 as those claims asserted by the DFEH, he is entitled to intervene in the pending case.

24 **B. Alternatively, Carauddo Should Be Permitted to Intervene Pursuant to FRCP 24(b)**

25 Upon timely application, anyone may be permitted to intervene in an action when an applicant's
 26 claim and the main action have a question of law and fact in common. In exercising its discretion, the
 court shall consider whether the intervention will unduly delay or prejudice the adjudication of rights of
 the original parties. FRCP 24(b)(2). Courts frequently permit intervention in civil rights cases. *See,*

1 e.g., *United States v. California Mobile Home Park Mgmt. Co.*¹, 29 F.3d 1413, 1415 (9th Cir. 1994)
 2 (permitting intervention in a case brought under the Fair Housing Act, 42 U.S.C. § 3604); *Crumble v.*
 3 *Blumthal*, 549 F.2d 462, 468-469 (same).

4 First, four out of five of Carauddo's claims are based upon the exact same events as the claims
 5 that are being advanced by the DFEH are based upon the exact same events – Lucent's decision to
 6 terminate Carauddo; Lucent's failure to engage in the interactive process with Carauddo; and Lucent's
 7 failure to reasonably accommodate Carauddo. Indeed, three out of four of the claims in Carauddo's
 8 complaint are *identical* to the claims asserted by the DFEH. Given the tremendous overlap, it is beyond
 9 dispute that the claims alleged by Carauddo and the DFEH have "questions of fact and law in common."

10 Second, the litigation in the case filed by the DFEH has only just begun. The parties have not
 11 engaged in extensive motion practice, have not yet promulgated discovery requests, and have not taken
 12 depositions. Furthermore, the case is not set for trial for more than fifteen months. The intervention
 13 will not result in any delay in the case, and will not prejudice the rights of the existing parties.

14 Third, permitting Carauddo to intervene in this case will result in judicial economy, which is a
 15 proper consideration in resolving a motion to intervene. *Venagos v. Skaggs*, 867 F. 2d 527, 531 (9th
 16 Cir. 1989). If Carauddo is not permitted to intervene, he will be forced to file a second lawsuit, in which
 17 the same legal and factual issues would be resolved, which would result in a waste of scarce court
 18 resources.

19 Fourth, denying Carauddo's motion to intervene may prejudice his right to recovery. While
 20 Carauddo is the real-party-in-interest in this action, the DFEH is charged with considering the interests
 21 of all employees in the state of California in determining (among other things) its settlement posture and
 22 its aggressive pursuit of the matter. Potential conflicts may arise between the DFEH's obligations as a
 23 representative of the State of California, and the interests of Carauddo. Permitting Carauddo to

24 ¹ The Ninth Circuit issued two decisions in the *California Mobile Home Park case*. In the second
 25 decision, *United States v. California Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1377-78 (9th Cir.
 26 1997), the Ninth Circuit's held that intervening parties have an absolute right to a jury trial, as long as a
 demand is timely made under FRCP 38(d). Thus, if the Court grants Carauddo's motion to intervene,
 he is entitled to include a jury trial demand in his complaint-in-intervention.

1 intervene in this action is the best way to ensure that his rights and interests will be fully represented and
2 protected.

3 **IV. CONCLUSION**

4 As the real-party-in-interest identified in the DFEH's Complaint, Carauddo is entitled to
5 intervene in this case. Alternatively, given the stage in the proceedings, and the overlap between the
6 claims that Caruaddo seeks to bring and those that have been asserted by the DFEH, Carauddo should be
7 permitted to intervene. Accordingly, Carauddo requests that his Motion to Intervene be granted.

8 Dated: November 27, 2007

Respectfully submitted,

9 VINICK LAW FIRM

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11
12 By: /s/ Sharon Vinick
13 SHARON VINICK

14
15 Dated: November 27, 2007

BOXER & GERSON

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17 By: /s/ Jean K. Hyamns
18 JEAN K. HYAMS
19 Attorneys for Steven J. Carauddo